

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1115 of 2001

to

CIVIL REVISION APPLICATION No 1125 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

@

STATE OF GUJARAT

Versus

DINESH JAGA RABADIYA

Appearance:

Mr.U.R.Bhatt, learned AGP for Petitioners

MR MEHUL S SHAH for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 11/04/2002

COMMON ORAL JUDGEMENT

1. The petitioner - State of Gujarat - original opponent has filed these Revision Applications

challenging the orders passed by the learned Joint District Judge, Jamnagar below Application Exh.1 in respective Darkhast filed by the respondents-claimants, wherein the learned Joint District Judge, Jamnagar has issued Jangam Warrant for attachment of property under Order 21 Rule 30 of the C.P.C. in respect of the decretal amount under the Award, which was granted in favour of the claimants. It is not in dispute that the lands of the respondents- claimants were acquired under the Land Acquisition Act and the Land Acquisition Officer has fixed the compensation by declaring the Award. The References were filed before the District Court under Sec.18 of the Land Acquisition Act and the learned Extra Assistant Judge, Jamnagar in Land Reference Case No.361/87 and others by common order has allowed the References of the claimants partly by granting additional amount of compensation in respect of the land by directing the State to pay solatium at the rate of 30% on the additional amount to the respondents claimants and also to pay interest at the rate of 12% on the market value of the land from the date of publication of the Notification under Sec.4 of the Land Acquisition Act upto the date of the Award or the date of taking over possession of the land, whichever is earlier. As per the Schedule to the Judgment, the learned Extra Assistant Judge has mentioned the amount, which the claimants are entitled to as well as the solatium at the rate of 30% and the interest at the rate of 12% on the additional compensation. As the Reference Court has granted additional compensation in respect of the lands of the respondents - claimants, each claimant has taken out the execution proceedings for recovering the amount, which was awarded by the learned Extra Assistant Judge. The same is highlighted in the Execution Application filed by the respondent - claimant vide Exh.1 in each Revision Application.

2. It is the case of the respondents - claimants that as the petitioner - State has not deposited the amount, they have to take out execution proceedings and notices were issued to the State in the said Darkhasts. In response to the notices several adjournments were sought for by the Government Pleader and during hearing it was the contention raised on behalf of the petitioner State through the Government Pleader that there is no provision that the claimants are entitled to the interest on the solatium and as the claimants are not entitled for interest on the solatium amount, the Darkhasts filed by the claimants deserve to be rejected. The learned Joint District Judge, Jamnagar while considering the contention raised before him and the provisions of the Act and on

considering the judgment wherein the claimants have been awarded additional amount of compensation with solatium and interest, has observed that the State has not deposited the amount as per the award and the executing court has no power to go beyond the award passed under Sec.18 of the Land Acquisition Act and accordingly the learned Joint District Judge has passed order under Order 11 Rule 30.

3. Mr. U.R.Bhatt, learned AGP, has while arguing the matter taken me through the orders under challenge and the judgment and award passed by the Reference Court. It is his submission that the learned trial Judge has not properly considered the contention raised on behalf of the Government that the claimants are not entitled for interest on the solatium amount as well as interest on the additional amount granted by the Reference Court.

4. Mr.Mehul Shah, appearing for the respondents claimants, has placed reliance upon the decision of the Apex Court in the matter of Sunder v. Union of India, reported in 2001(3) GLH 446. The Apex court has while considering the provisions of Sections 23(2), 28, 38 and 26 of the Land Acquisition Act, 1894 and considering the decisions in the matter of Union of India v. Shri Ram Mehar, reported in 1973(2) SCR 684 and in the matter of Yadavrao P. Pathade's case reported in JT 1996 (2) SC 240, in term held that the claimants are entitled even for interest on the amount of solatium. In the present case, the petitioner - State has already deposited the additional amount of compensation granted by the Reference Court with solatium and interest. However, the Government has not deposited the interest on the solatium as well as interest on the additional amount granted by the Reference Court. In light of the decision of the Apex court in the above matter, the contentions raised in these Revision Applications by the State are not available. The execution applications are filed only in respect of the recovery of the amount of interest on solatium as well as interest on additional amount and the learned trial Judge has passed orders on applications for execution under order 21 Rule 30. Accordingly, this is not a matter where this court is required to interfere with while exercising my revisional jurisdiction and accordingly all the Revision Applications filed by the petitioner State deserves to be rejected and the same are rejected. Rule is accordingly discharged in each matter. Interim relief granted earlier in each matter stands vacated. However, there will be no order as to costs.

(D.K.Trivedi,J)

arg